



Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss

COMMISSION ADJUDICATORY
DOCKET NO. 06-0020

IN THE MATTER OF JOHN JENKINS

DISPOSITION AGREEMENT

The State Ethics Commission and John Jenkins enter into this Disposition Agreement pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, § 4(j).

On July 25, 2006, the Commission initiated, pursuant to G.L. c. 268B, § 4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Jenkins. The Commission has concluded its inquiry and, on September 13, 2006, found reasonable cause to believe that Jenkins violated G.L. c. 268A.

The Commission and Jenkins now agree to the following findings of fact and conclusions of law.

Findings of Fact

1. At the time relevant, Jenkins was the West Barnstable Fire Department chief.
2. During the time relevant, Jenkins also worked as a commissioned sales representative for Pierce Manufacturing (Pierce), a Wisconsin based fire equipment company. The local Pierce dealer is Minuteman Fire and Rescue Apparatus (Minuteman) located in Walpole, Massachusetts.
3. In 2004, the fire department needed to refurbish its 1985 Pierce Engine-Tanker 296 (ET-296). The refurbishment included replacing the tank and pump, along with body work and repainting. The preliminary bid documents for the ET-296 refurbishment were drawn up by Jenkins and a mechanic on March 29, 2004, and submitted to the fire department's prudential committee on April 14, 2004.
4. Four vendors requested copies of the refurbishment specifications. Two vendors subsequently submitted proposals at the November 22, 2004 bid opening, one of which was Minuteman/Pierce. Jenkins and other fire department personnel reviewed the two proposals. Minuteman/Pierce was the low bidder. In a November 29, 2004 memo, Jenkins recommended the prudential committee accept the Minuteman/Pierce bid.

5. The prudential committee selected Minuteman/Pierce to refurbish the ET-296 based on its lower bid and its ability to meet the fire department's specifications. The refurbishment contract was for \$153,000.

6. Throughout the bid and subsequent refurbishment process, Jenkins served as the primary fire department liaison with Minuteman/Pierce. Jenkins repeatedly communicated by telephone and in writing with Minuteman/Pierce personnel regarding the ET-296 refurbishment.

7. Jenkins retired from the fire department in March 2005.

8. The ET-296 was returned to service in May 2005. Minuteman/Pierce completed the work on time and within budget.

9. Jenkins did not earn a commission from Minuteman/Pierce when the prudential committee awarded the company the ET-296 refurbishment project.

10. The Commission received no evidence that Jenkins as fire chief showed favor or disfavor towards Minuteman/Pierce.

Conclusions of Law

11. As the West Barnstable Fire Department Chief, Jenkins was a municipal employee within the meaning of G.L. c. 268A.

12. Section 23(b)(3) prohibits a municipal employee from, knowingly or with reason to know, acting in a manner which would cause a reasonable person, knowing all of the facts, to conclude that anyone can improperly influence or unduly enjoy that person's favor in the performance of his official duties. This subsection goes on to provide that the appearance of impropriety can be avoided if the public employee discloses in writing to his appointing authority all of the relevant circumstances which would otherwise create the appearance of a conflict of interest.

13. Jenkins participated as fire chief in drawing up the preliminary bid documents for the ET-296 refurbishment, recommending that the prudential committee accept the Minuteman/Pierce bid and acting as the fire department liaison with Minuteman/Pierce throughout the bid and subsequent refurbishment process.

14. When he so participated in these matters while he was also a Minuteman/Pierce sales representative, Jenkins knew or had reason to know that he was creating an appearance of impropriety by performing his fire department duties regarding the ET-296 refurbishment when Minuteman/Pierce was a likely bidder and subsequently was in fact awarded the contract.

15. Thus, Jenkins knew or had reason to know that he was acting in a manner which would cause a reasonable person, knowing all of the relevant facts, to conclude that Minuteman/Pierce could improperly influence or unduly enjoy Jenkins's favor in the performance of Jenkins's official duties relating to the ET-296 refurbishment because of the private business relationship between Jenkins and Minuteman/Pierce. Thus, Jenkins violated § 23(b)(3).

16. Jenkins did not file any written disclosure with his appointing authority to dispel this appearance of impropriety.

Resolution

In view of the foregoing violations of G.L. c. 268A by Jenkins, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Jenkins:

- (1) that Jenkins pay to the Commission the sum of \$2,000 as a civil penalty for violating § 23(b)(3) of G.L. c. 268A; and
- (2) that Jenkins waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: November 16, 2006